

Improving independent complaints advocacy in health and social care

Background and position briefing

November 2013



1. The current independent complaints advocacy system

Advocacy is support for people who are making a complaint - from assistance with letter writing through to help navigating a complex system and representation in meetings that may be confusing or distressing for individuals.

This service is particularly important when a concern or complaint spans more than one resolution process (local, courts, fitness to practice) and because many people feel vulnerable or exposed at the time of making a complaint about their care or treatment.

Complaints advocacy in the NHS is far more developed than in social care. Initially, Community Health Councils (established in 1974¹) had a remit to give advice and support to members of the public on how to go about making a complaint about their local health services, until they were abolished in 2003².

Currently, support is offered through NHS Complaints Advocacy Services (NHS CAS)³, which replaced the Independent Complaints Advocacy Service (ICAS) for the NHS that operated from 2003 to April 2013. NHS CAS are commissioned by local authorities to provide support for people wishing to complain about their treatment or care received under the NHS⁴. While NHS CAS is primarily commissioned to focus on health complaints, in some areas (based on commissioner appetite or provider passion) support is also offered to those who have a social care complaint.

The Patient Advice and Liaison Services (PALS) were created in 2002 to provide information and on the spot help where patients want to resolve a problem without making a formal complaint. Its role is to provide confidential advice, support and reassurance, and to resolve small problems locally. PALS are allowed to assist with the filing of a formal complaint in addition to their informal resolution powers.

Whilst the Health and Social Care Act⁵ abolished commissioner (Primary Care Trust) PALS, provider (hospital) PALS remain in place and are mandated by regulations to be prominently displayed in hospital entrances.

There are also some avenues for advocacy and support from other agencies and charities. Some people have turned to Local Healthwatch to assist them in their complaints, drawing on their powers to get answers from healthcare providers and inspect premises.

Some Clinical Commissioning Groups (CCGs) offer PALS to give general advice and support about NHS primary services. There are also some charities which offer

¹National Health Service Reorganisation Act [1973]:

<http://www.legislation.gov.uk/ukpga/1973/32/section/9/enacted>

² National Health Service Reform & Health Care Professions Act [2002]:

<http://www.legislation.gov.uk/ukpga/2002/17/section/22>

³ section 223A (2), Local Government & Public Involvement in Health Act [2007]:

<http://www.legislation.gov.uk/ukpga/2007/28/contents>, as amended by Health & Social Care Act [2012]:

<http://www.legislation.gov.uk/ukpga/2012/7/contents/enacted>

⁴ ICAS were established under the Health & Social Care Act [2001]:

<http://www.legislation.gov.uk/ukpga/2001/15/contents>

⁵ Health & Social Care Act [2012]: <http://www.legislation.gov.uk/ukpga/2012/7/contents/enacted>

help, such as Action for Victims of Medical Accidents (AvMA), and patients may seek legal advice and advocacy if they choose to purchase it. The Citizens' Advice Bureau (CAB) also provides general guides on filing complaints, as well as signposting to other agencies, and NHS Direct can offer guidance on how to file a complaint.

Problems in the System:

The current system of independent complaints advocacy and support offers is complex and inconsistent. A number of problems have been identified by the recent raft of reports on patient safety, health care quality and complaints.

- **People don't know where to go for help.** The Clwyd-Hart report commented on the need for substantially more publicity relating to complaints advocacy services, as many patients had no idea that these services existed. Many others have noted that this problem was exacerbated by the replacement of ICAS with NHS CAS, which often bear different names in different areas.⁶
- **Advocacy in health complaints is hard to obtain and of inconsistent quality.**⁷ We have heard significant concerns about the sufficiency and coverage of local NHS CAS and the extent to which they are supporting people in finding local resolutions to their complaints. In some areas, NHS CAS have been commissioned to the same organisation that runs the Local Healthwatch. In these areas, we are starting to see a more consolidated complaints advocacy and support offer. However, there is inconsistency in access to complaints advocacy across areas based on the appetite of councils and availability of resource.
- **The health complaints advocacy system is not supportive of people when they feel vulnerable.**⁸ People are often exhausted and emotionally spent from their experiences in hospital, particularly if something has gone wrong in their care. Many have noted that the advocacy system does not do enough to support people who are in difficult personal circumstances through the complaints process. People are also denied support by friends and relatives in the system, as non-patients cannot complain on a patient's behalf unless they are explicitly authorized or the Trust has agreed to their capacity to serve as representatives.
- **There is inadequate access to independent complaints advocacy for adult social care.** Coverage for adult social care independent complaints advocacy is under significant threat as there is no overall duty on councils to provide independent support to those raising a concern or making a

⁶ Clwyd-Hart review at 26.

⁷ The Mid Staffordshire NHS Foundation Trust Public Inquiry, Chaired by Robert Francis QC. Report of the Mid Staffordshire NHS Foundation Trust Public Inquiry (February 2013) (hereafter, "Francis report at 3.45-3.46. Available at: <http://www.midstaffpublicinquiry.com/report> ; Department of Health. (October 2013). Report of handling of complaints by NHS hospitals in England by Ann Clwyd MP and Professor Tricia Hart.. *A review of the NHS hospitals complaints system: putting patients back in the picture*, at 22-23 (hereafter, "Clwyd-Hart review") Available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/255615/NHS_complaints_accessible.pdf

⁸ Francis report at 3.130.

complaint. Increasingly, councils are cutting the discretionary advocacy they commission as local budgets come under significant pressure. This is a glaring omission in the system, leaving social care consumers without the help they need to protect their rights.

- **There is no consolidated offer for advocacy across services and organisations:** depending on the nature of your concern or your personal circumstances (i.e. if you have limited mental capacity or are detained under the Mental Health Act) you will need to access different advocacy services. Currently, support does not follow the individual and many find that advocacy is stopped unexpectedly. This can leave people isolated or unable to pursue a satisfactory resolution to their complaint.
- **PALS services are not always independent and some are of poor quality.** In some areas, PALS provide both complaint handling for hospitals as well as provide advocacy services for patients. Because of their divided loyalties, they cannot provide independent advocacy for patients, who are denied the support they need to navigate the system.⁹ Some patients are made to believe they have to go through PALS first before filing a complaint, making the complaints process even longer and more challenging.¹⁰ We have also heard concerns inconsistent standards of service among PALS, and reports of inadequate signposting and collaboration with local NHS CAS and local Healthwatch.

2. Improving independent complaints advocacy for health and social care

The current complexity and inconsistency of local advocacy and support offers need resolving.

Access to NHS complaints advocacy varies across local areas, as it is reliant on the appetite of councils and availability of resources. Coverage for social care complaints advocacy is under significant threat as there is no duty on councils to provide independent support to those raising a concern or making a complaint. Increasingly, councils are cutting the discretionary advocacy they commission as local budgets come under significant pressure.

Our principles

Our work with consumers and sector leaders has enabled us to identify six core principles for complaint reform.¹¹ People told us that they wanted a system of complaints handling and advocacy that was:

- **Independent and confidential:** a service that they could trust to look at things impartially, that raising a concern does not adversely affect their treatment or care and that respects their privacy and progresses their concern or complaint to a satisfactory resolution.

⁹ Department of Health. (August 2013). Berwick review into patient safety. *A promise to learn - a commitment to act: improving the safety of patients in England*, at 19. Available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/226703/Berwick_Report.pdf

¹⁰ Francis report at 3.114-3.120.

¹¹ Healthwatch England (2013) *Complaints: People not process* (video reports): <http://www.healthwatch.co.uk/complaints>

- **Responsive:** a service that listens to the needs, preferences and anxieties of the people making complaints and responds to them in a timely manner, in a way that works for them.
- **Supportive:** a service that helps and supports them to navigate through any complex or difficult stages in making a complaint.
- **Simple:** a system that is easy to understand whereby people know what their rights are and what they should expect from complaints handling and advocacy services.
- **Joined up:** a system where people only have to raise a concern or make a complaint once, where any door is the right door and any complexity of case handling (like coordinating multiple complaints to a provider, professional body and regulator) all happen behind the scenes, rather than the person having to navigate this themselves. This would be accompanied by one complaints advocacy offer so you know who is supporting you from the start to the resolution of your case.
- **Transparent:** a system that is up-front about the processes that are being used and the decisions that are being made, keeping people up to date with any changes in their case.

In order to implement these principles in independent complaints advocacy, we have proposed to the Government a three-stage plan of action.

Immediate actions:

We believe there is a role for us to design and promote standards for health and social care complaints handling and consolidated complaints advocacy offer.

Reports have found substantial variation in services meant to support people, depending on area and provider. Because of the lack of consistent standards, many people don't know what services are available to them and are confused about the roles of PALS, NHS CAS and local complaints managers.¹²

Even where support exists, it is not necessarily independent: in some hospitals, there is no separation between advocacy and complaints management services. We find these inconsistencies very troubling, and believe that national standards for complaints handling and advocacy are needed to ensure quality services for everyone.

We believe that Patient Advice and Liaison Services (PALS) should be resourced to ensure staff are fully aware of complaints procedures and trained to recognise and address complaints by either providing information on the complaints procedure or referring the complainant to the local NHS CAS.

¹² Clwyd-Hart review at 22-23, 26.

We have heard concerns about the independence and inconsistent standards of service among PALS and inadequate signposting and collaboration with local NHS CAS and Local Healthwatch. PALS play a key role in the system, and they must have the training and resources necessary to do their job well.

Actions over the next year:

We would like to explore using the Healthwatch brand to kite-mark or existing NHS CAS contracts, and requiring NHS CAS to collaborate with Local Healthwatch.

Though NHS CAS services are commissioned throughout England, many feel that support is absent, or do not know how to access it.¹³ Part of the problem lies in the lack of a national brand for complaints advocacy services, and the Clwyd-Hart report noted that NHS CAS services often have different names in different regions.¹⁴

By creating a single name and requiring advocacy services to collaborate with Local Healthwatch, consumers will have better signposting about where to go for help, and Local Healthwatch can help to monitor the quality of advocacy services.

Changes to the law:

Department of Health and the Parliamentary & Health Services Ombudsman have agreed to work with us and other advocacy organisations to establish standards for a new consolidated complaints advocacy offer that spans health and social care across all settings.

Health and social care consumers would be best served by single, simple, joined-up way of getting support for their complaints.

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¹³ Clwyd-Hart at 22-23, 26.

¹⁴ Clwyd-Hart 26.